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AN ACT  
RELATING TO EDUCATIONAL RETIREMENT; ALLOWING ELIGIBLE  
EMPLOYEES OF SOUTHEAST NEW MEXICO COLLEGE TO PARTICIPATE IN  
THE ALTERNATIVE RETIREMENT PLAN; CONFORMING THE REQUIRED  
MINIMUM DISTRIBUTION AGE TO THE FEDERAL INTERNAL REVENUE CODE  
OF 1986.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-11-2 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational  
Retirement Act:

A. "member" means an employee, except for a  
participant or a retired member, coming within the provisions  
of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed by a state  
educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital  
or outpatient clinics thereof operated by a state educational  
institution named in Article 12, Section 11 of the  
constitution of New Mexico;

(2) a person regularly employed by a junior  
college or community college created pursuant to Chapter 21,

1 Article 13 NMSA 1978, except for a participant;

2 (3) a person regularly employed by a  
3 technical and vocational institute created pursuant to the  
4 Technical and Vocational Institute Act, except for a  
5 participant;

6 (4) a person regularly employed by the  
7 New Mexico boys' school, the girls' welfare home, the Los  
8 Lunas medical center or a school district or as a licensed  
9 school employee of a state institution or agency providing an  
10 educational program and holding a license issued by the  
11 department, except for a participant;

12 (5) a person regularly employed by the  
13 department holding a license issued by the department at the  
14 time of commencement of such employment;

15 (6) a member classified as a regular member  
16 in accordance with the rules of the board;

17 (7) a person regularly employed by the  
18 New Mexico activities association holding a license issued by  
19 the department at the time of commencement of such  
20 employment; or

21 (8) a person regularly employed by a  
22 regional education cooperative holding a license issued by  
23 the department at the time of commencement of such  
24 employment;

25 C. "provisional member" means a person described

1 in Section 22-11-17 NMSA 1978;

2 D. "local administrative unit" means an employing  
3 agency however constituted that is directly responsible for  
4 the payment of compensation for the employment of members or  
5 participants;

6 E. "beneficiary" means a person having an  
7 insurable interest in the life of a member or a participant  
8 designated by written instrument duly executed by the member  
9 or participant and filed with the director to receive a  
10 benefit pursuant to the Educational Retirement Act that may  
11 be received by someone other than the member or participant;

12 F. "employment" means employment by a local  
13 administrative unit that qualifies a person to be a member or  
14 participant;

15 G. "service employment" means employment that  
16 qualifies a person to be a regular member;

17 H. "provisional service employment" means  
18 employment that qualifies a person to be a provisional  
19 member;

20 I. "prior employment" means employment performed  
21 prior to the effective date of the Educational Retirement Act  
22 that would be service employment or provisional service  
23 employment if performed thereafter;

24 J. "service credit" means that period of time with  
25 which a member is accredited for the purpose of determining

1 the member's eligibility for and computation of retirement or  
2 disability benefits;

3 K. "earned service credit" means that period of  
4 time during which a member was engaged in employment or prior  
5 employment with which the member is accredited for the  
6 purpose of determining the member's eligibility for  
7 retirement or disability benefits;

8 L. "allowed service credit" means that period of  
9 time during which a member has performed certain nonservice  
10 employment with which the member may be accredited, as  
11 provided in the Educational Retirement Act, for the purpose  
12 of computing retirement or disability benefits;

13 M. "retirement benefit" means an annuity paid  
14 monthly to members whose employment has been terminated by  
15 reason of their age;

16 N. "disability benefit" means an annuity paid  
17 monthly to members whose employment has been terminated by  
18 reason of a disability;

19 O. "board" means the educational retirement board;

20 P. "fund" means the educational retirement fund;

21 Q. "director" means the educational retirement  
22 director;

23 R. "medical authority" means a medical doctor or  
24 medical review panel designated or employed by the board to  
25 examine medical records and report on the medical condition

1 of applicants for or recipients of disability benefits;

2 S. "actuary" means a person trained and regularly  
3 engaged in the occupation of calculating present and  
4 projected monetary assets and liabilities under annuity or  
5 insurance programs;

6 T. "actuarial equivalent" means a sum paid as a  
7 current or deferred benefit that is equal in value to a  
8 regular benefit, computed upon the basis of interest rates  
9 and mortality tables;

10 U. "contributory employment" means employment for  
11 which contributions have been made by both a member and a  
12 local administrative unit pursuant to the Educational  
13 Retirement Act;

14 V. "qualifying state educational institution"  
15 means the university of New Mexico, New Mexico state  
16 university, New Mexico institute of mining and technology,  
17 New Mexico highlands university, eastern New Mexico  
18 university, western New Mexico university, central New Mexico  
19 community college, Clovis community college, Luna community  
20 college, Mesalands community college, New Mexico junior  
21 college, northern New Mexico college, San Juan college,  
22 Santa Fe community college and southeast New Mexico college;

23 W. "participant" means:

24 (1) a person regularly employed as a faculty  
25 or professional employee of the university of New Mexico,

1 New Mexico state university, New Mexico institute of mining  
2 and technology, New Mexico highlands university, eastern  
3 New Mexico university or western New Mexico university who  
4 first becomes employed with such an educational institution  
5 on or after July 1, 1991, or a person regularly employed as a  
6 faculty or professional employee of the central New Mexico  
7 community college, Clovis community college, Luna community  
8 college, Mesalands community college, New Mexico junior  
9 college, northern New Mexico college, San Juan college or  
10 Santa Fe community college who is first employed by the  
11 institution on or after July 1, 1999, or a person regularly  
12 employed as a faculty or professional employee of southeast  
13 New Mexico college who is first employed by the institution  
14 on or after July 1, 2023, and who elects, pursuant to Section  
15 22-11-47 NMSA 1978, to participate in the alternative  
16 retirement plan; and

17 (2) a person regularly employed who performs  
18 research or other services pursuant to a contract between a  
19 qualifying state educational institution and the United  
20 States government or any of its agencies who elects, pursuant  
21 to Section 22-11-47 NMSA 1978, to participate in the  
22 alternative retirement plan; provided that the research or  
23 other services are performed outside the state;

24 X. "salary" means the compensation or wages paid  
25 to a member or participant by any local administrative unit

1 for services rendered. "Salary" includes payments made for  
2 annual or sick leave and payments for additional service  
3 provided to related activities, but does not include payments  
4 for sick leave not taken unless the payment for the unused  
5 sick leave is made through continuation of the member on the  
6 regular payroll for the period represented by that payment  
7 and does not include allowances or reimbursements for travel,  
8 housing, food, equipment or similar items;

9 Y. "alternative retirement plan" means the  
10 retirement plan provided for in Sections 22-11-47 through  
11 22-11-52 NMSA 1978; and

12 Z. "retired member" means a person whose  
13 employment has been terminated by reason of age and who is  
14 receiving or is eligible to receive retirement benefits."

15 SECTION 2. Section 22-11-30 NMSA 1978 (being Laws 1967,  
16 Chapter 16, Section 153, as amended) is amended to read:

17 "22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

18 A. Retirement benefits for a member retired  
19 pursuant to the Educational Retirement Act on or before  
20 June 30, 1967 shall be paid monthly and shall be one-twelfth  
21 of a sum equal to one and one-half percent of the first four  
22 thousand dollars (\$4,000) of the member's average annual  
23 salary and one percent of the remainder of the member's  
24 average annual salary multiplied by the number of years of  
25 the member's total service credit.

1           B. Retirement benefits for a member retired  
2 pursuant to the Educational Retirement Act on or after July  
3 1, 1967 but on or before June 30, 1971 shall be paid monthly  
4 and shall be one-twelfth of a sum equal to one and one-half  
5 percent of the first six thousand six hundred dollars  
6 (\$6,600) of the member's average annual salary and one  
7 percent of the remainder of the member's average annual  
8 salary multiplied by the number of years of the member's  
9 total service credit.

10           C. Retirement benefits for a member retired  
11 pursuant to the Educational Retirement Act on or after  
12 July 1, 1971 but on or before June 30, 1974 shall be paid  
13 monthly and shall be one-twelfth of a sum equal to one and  
14 one-half percent of the member's average annual salary  
15 multiplied by the number of years of the member's total  
16 service credit.

17           D. Retirement benefits for a member retired  
18 pursuant to the Educational Retirement Act on or before  
19 June 30, 1974 but returning to employment on or after July 1,  
20 1974 for a cumulation of one or more years shall be computed  
21 pursuant to Subsection E of this section. Retirement  
22 benefits for a member retired pursuant to the Educational  
23 Retirement Act on or before June 30, 1974 but returning to  
24 employment on or after July 1, 1974 for a cumulation of less  
25 than one year shall be computed pursuant to Subsection A of

1 this section if the member's date of last retirement was on  
2 or before June 30, 1967 or pursuant to Subsection B of this  
3 section if the member's date of last retirement was on or  
4 after July 1, 1967 but not later than June 30, 1971 or  
5 pursuant to Subsection C of this section if the member's date  
6 of last retirement was on or after July 1, 1971 but not later  
7 than June 30, 1974.

8 E. Retirement benefits for a member age sixty or  
9 over, retired pursuant to the Educational Retirement Act on  
10 or after July 1, 1974 but not later than June 30, 1987, shall  
11 be paid monthly and shall be one-twelfth of a sum equal to:

12 (1) one and one-half percent of the member's  
13 average annual salary multiplied by the number of years of  
14 service credit for:

15 (a) prior employment; and

16 (b) allowed service credit for service  
17 performed prior to July 1, 1957, except United States  
18 military service credit purchased pursuant to Paragraph (3)  
19 of Subsection A of Section 22-11-34 NMSA 1978; plus

20 (2) two percent of the member's average  
21 annual salary multiplied by the number of years of service  
22 credit for:

23 (a) contributory employment;

24 (b) allowed service credit for service  
25 performed after July 1, 1957; and

1 (c) United States military service  
2 credit for service performed prior to July 1, 1957 and  
3 purchased pursuant to Paragraph (3) of Subsection A of  
4 Section 22-11-34 NMSA 1978.

5 F. Retirement benefits for a member age sixty or  
6 over, retired pursuant to the Educational Retirement Act on  
7 or after July 1, 1987 but not later than June 30, 1991, shall  
8 be paid monthly and shall be one-twelfth of a sum equal to  
9 two and fifteen-hundredths percent of the member's average  
10 annual salary multiplied by the number of years of the  
11 member's total service credit; provided that this subsection  
12 shall not apply to any member who was retired in any of the  
13 four quarters ending on June 30, 1987 without having  
14 accumulated not less than 1.0 years earned service credit  
15 after June 30, 1987.

16 G. Retirement benefits for a member who retires  
17 pursuant to Section 22-11-23 NMSA 1978 on or after July 1,  
18 1991 shall be paid monthly and shall be one-twelfth of a sum  
19 equal to two and thirty-five hundredths percent of the  
20 member's average annual salary multiplied by the number of  
21 years of the member's total service credit; provided that:

22 (1) the benefit for a member who retires  
23 pursuant to Paragraph (3) of Subsection A of Section 22-11-23  
24 NMSA 1978 shall be reduced by:

25 (a) six-tenths percent for each one-

1 fourth, or portion thereof, year that retirement occurs prior  
2 to the member attaining the age of sixty years but after the  
3 member attains the age of fifty-five years; and

4 (b) one and eight-tenths percent for  
5 each one-fourth, or portion thereof, year that retirement  
6 occurs prior to the member attaining the age of fifty-five  
7 years;

8 (2) the benefit formula provided in this  
9 subsection shall not apply to any member who was retired in  
10 any of the four consecutive quarters ending on June 30, 1991  
11 without having accumulated at least one year of earned  
12 service credit beginning on or after July 1, 1991; and

13 (3) a member shall be subject to the  
14 provisions of Paragraph (1) of this subsection as they  
15 existed at the beginning of the member's last cumulated four  
16 quarters of earned service credit, regardless of later  
17 amendment.

18 H. Retirement benefits for a member who retires  
19 pursuant to Section 22-11-23.1 NMSA 1978 shall be paid  
20 monthly and shall be one-twelfth of a sum equal to two and  
21 thirty-five hundredths percent of the member's average annual  
22 salary multiplied by the number of years of the member's  
23 total service credit; provided that:

24 (1) the benefit for a member who retires  
25 pursuant to Paragraph (3) of Subsection A of Section

1 22-11-23.1 NMSA 1978 shall be reduced by:

2 (a) six-tenths percent for each one-  
3 fourth, or portion thereof, year that retirement occurs prior  
4 to the member attaining the age of sixty-five years but after  
5 the member attains the age of sixty years; and

6 (b) one and eight-tenths percent for  
7 each one-fourth, or portion thereof, year that retirement  
8 occurs prior to the member attaining the age of sixty years;  
9 and

10 (2) a member shall be subject to the  
11 provisions of Paragraph (1) of this subsection as they  
12 existed at the beginning of the member's last cumulated four  
13 quarters of earned service credit, regardless of later  
14 amendment.

15 I. Retirement benefits for a member who retires  
16 pursuant to Section 22-11-23.2 NMSA 1978 shall be paid  
17 monthly and shall be one-twelfth of a sum equal to two and  
18 thirty-five hundredths percent of the member's average annual  
19 salary multiplied by the number of years of the member's  
20 total service credit; provided that:

21 (1) the benefit for a member retiring  
22 pursuant to Paragraph (3) of Subsection A of Section  
23 22-11-23.2 NMSA 1978 shall be reduced by:

24 (a) six-tenths percent for each one-  
25 fourth, or portion thereof, year that retirement occurs prior

1 to the member attaining the age of sixty-five years but after  
2 the member attains the age of sixty years; and

3 (b) one and eight-tenths percent for  
4 each one-fourth, or portion thereof, year that retirement  
5 occurs prior to the member attaining the age of sixty years;  
6 and

7 (2) a member shall be subject to the  
8 provisions of Paragraph (1) of this subsection as they  
9 existed at the beginning of the member's last cumulated four  
10 quarters of earned service credit, regardless of later  
11 amendment.

12 J. Retirement benefits for a member who retires in  
13 accordance with Section 22-11-23.3 NMSA 1978 shall be paid  
14 monthly and:

15 (1) in an amount equal to one-twelfth of the  
16 sum of the following:

17 (a) for the first ten years of the  
18 member's service credit, one and thirty-five hundredths  
19 percent of the member's average annual salary multiplied by  
20 the member's years of service credit between one-fourth of a  
21 year and ten years;

22 (b) for that portion of the member's  
23 service credit earned after ten years of service credit and  
24 through twenty years of service credit, two and thirty-five  
25 hundredths percent of the member's average annual salary

1 multiplied by the member's years of service credit between  
2 ten and twenty years;

3 (c) for that portion of the member's  
4 service credit earned after twenty years of service credit  
5 and through thirty years of service credit, three and thirty-  
6 five hundredths percent of the member's average annual salary  
7 multiplied by the member's years of service credit between  
8 twenty and thirty years; and

9 (d) for that portion of the member's  
10 service credit earned after thirty years of service credit,  
11 two and four-tenths percent of the member's average annual  
12 salary multiplied by the member's years of service credit  
13 over thirty years; or

14 (2) if the member retires in accordance  
15 with:

16 (a) Subsection A of Section 22-11-23.3  
17 NMSA 1978 and is under fifty-eight years of age, in an amount  
18 equal to the result determined under Paragraph (1) of this  
19 subsection, but reduced to the actuarial equivalent, based on  
20 what is at the time of the member's retirement the most  
21 current set of actuarial factors determined by the board, of  
22 the benefit the member would receive if the member had  
23 retired at fifty-eight years of age;

24 (b) Subsection C of Section 22-11-23.3  
25 NMSA 1978 and is sixty years of age or older and under

1 sixty-five, in an amount equal to the result determined under  
2 Paragraph (1) of this subsection, but reduced by six-tenths  
3 percent for each one-fourth, or portion thereof, year before  
4 the member reaches age sixty-five; or

5 (c) Subsection C of Section 22-11-23.3  
6 NMSA 1978 and is younger than sixty years of age, in an  
7 amount equal to one and eight-tenths percent for each  
8 one-fourth, or portion thereof, year before the member  
9 reaches sixty years of age.

10 K. In determining a member's average annual salary  
11 for purposes of this section:

12 (1) the data set shall consist of the annual  
13 salary of each of the last five years, or any consecutive  
14 five years, for which contribution was made by the member,  
15 whichever produces a higher result; and

16 (2) lump-sum payments made after July 1,  
17 2010 of accrued sick leave or annual leave shall be excluded  
18 from the calculation.

19 L. On and after July 1, 2019, if the member's  
20 average annual salary is greater than sixty thousand dollars  
21 (\$60,000):

22 (1) the salary in a first twelve-month  
23 interval that occurs beginning July 1, 2019 or thereafter of  
24 the five-year period used to determine the average annual  
25 salary shall be adjusted to exclude any increase in salary in

1 excess of thirty percent of the salary in the twelve  
2 consecutive months of service credit preceding the five-year  
3 period; and

4 (2) the salary in each of the four  
5 succeeding twelve-month intervals that occur beginning July  
6 1, 2019 or thereafter of the five-year period, as adjusted to  
7 exclude any increase in salary in the twelve months preceding  
8 each such succeeding twelve-month interval that is in excess  
9 of the thirty-percent limitation provided in this subsection,  
10 shall be used to determine if the salary in that succeeding  
11 twelve-month interval exceeds the thirty-percent limitation  
12 and to adjust the salary to exclude any increase in excess of  
13 that limitation in determining the average annual salary.

14 M. On July 1, 2020 and on each July 1 thereafter,  
15 the salary threshold for applying the thirty-percent  
16 limitation provided for in Subsection L of this section shall  
17 be adjusted by applying an adjustment factor equal to the  
18 change in the consumer price index between the next preceding  
19 calendar year and the preceding calendar year if there is an  
20 increase in the consumer price index between the next  
21 preceding calendar year and the preceding calendar year.

22 N. Notwithstanding any provision of the  
23 Educational Retirement Act, retirement benefits shall be  
24 distributed in accordance with Section 401(a)(9) of the  
25 federal Internal Revenue Code of 1986, as amended, and the

1 regulations thereunder, including the minimum incidental  
2 death benefit restrictions of Section 401(a)(9)(G) of the  
3 Internal Revenue Code of 1986, as amended."

4 SECTION 3. Section 22-11-47 NMSA 1978 (being Laws 1991,  
5 Chapter 118, Section 5, as amended) is amended to read:

6 "22-11-47. ALTERNATIVE RETIREMENT PLAN--ELECTION OF  
7 COVERAGE.--

8 A. Beginning October 1, 1991, any employee of the  
9 university of New Mexico, New Mexico state university,  
10 New Mexico institute of mining and technology, New Mexico  
11 highlands university, eastern New Mexico university or  
12 western New Mexico university who is eligible to become a  
13 participant may make within ninety days of that date an  
14 election to participate in the alternative retirement plan.  
15 Beginning October 1, 1999, an employee of central New Mexico  
16 community college, Clovis community college, Luna community  
17 college, Mesalands community college, New Mexico junior  
18 college, northern New Mexico college, San Juan college or  
19 Santa Fe community college who is eligible to become a  
20 participant may make an election to participate in the  
21 alternative retirement plan within ninety days of the initial  
22 date. Beginning October 1, 2023, an employee of southeast  
23 New Mexico college who is eligible to become a participant  
24 may make an election to participate in the alternative  
25 retirement plan within ninety days of the initial date.

1     Thereafter, any employee who is eligible to become a  
2     participant may make within the first ninety days of  
3     employment with a qualifying state educational institution an  
4     election to participate in the alternative retirement plan.

5     Any employee who makes the election shall become a  
6     participant the first day of the first pay period following  
7     the election. Any employee who fails to make the election  
8     within ninety days of October 1, 1991, October 1, 1999 or  
9     October 1, 2023, whichever is applicable, or within the first  
10    ninety days of employment with a qualifying state educational  
11    institution shall become or remain a regular member if that  
12    employee is eligible to be a regular member and shall not  
13    later be eligible to elect to be a participant, regardless of  
14    whether the employee subsequently is employed in another  
15    position that is eligible for participation in the  
16    alternative retirement plan. Except as provided in  
17    Subsection D of this section, an election to become a  
18    participant is irrevocable.

19           B. Until the time an employee who is eligible to  
20    become a participant elects to participate in the alternative  
21    retirement plan, that employee shall be a regular member.

22           C. When an employee elects to become a  
23    participant, any employer and employee contributions made as  
24    a regular member shall be withdrawn from the fund and applied  
25    instead toward the alternative retirement plan as if the

1 participant had been participating in the alternative  
2 retirement plan from the commencement of employment with the  
3 qualifying state educational institution.

4 D. On July 1, 2009, any participant who has made  
5 contributions to the alternative retirement plan for a  
6 cumulative total of seven years or more shall have a one-time  
7 option of electing to become a regular member. Thereafter,  
8 once a participant has made contributions to the alternative  
9 retirement plan for a cumulative total of seven years, a  
10 participant shall have a one-time option of electing to  
11 become a regular member. Participants electing to become  
12 regular members shall exercise that option within one hundred  
13 twenty days of the date of becoming eligible to elect to  
14 become a regular member. Any amounts on deposit in an  
15 employee's alternative retirement plan account when a  
16 participant becomes a regular member shall remain on deposit  
17 with the contractor or carrier subject to that plan's  
18 provisions, unless otherwise provided by law. An employee  
19 who elects to become a regular member under this subsection  
20 shall use the date on which the employee was first employed  
21 with a qualifying state educational institution for purposes  
22 of determining any retirement eligibility requirement,  
23 provided that the employee:

24 (1) may not purchase service credit for  
25 periods of employment during which the employee participated

